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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/539,487

04/14/2006

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13871US/BAT018PA

2452

58503 7590 03/27/2009  
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EXAMINER

HOGAN, JAMES SEAN

ART UNIT

PAPER NUMBER

3752

MAIL DATE

DELIVERY MODE

03/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/539,487	<b>Applicant(s)</b> DAVIES ET AL.	
	<b>Examiner</b> JAMES S. HOGAN	<b>Art Unit</b> 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 22-46 and 49-67 is/are pending in the application.
- 4a) Of the above claim(s) 25,30-34 and 38-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-24,26-29,35-37,43, 46 and 49-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/25/08</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter of claims 58, 60, and 61 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Election/Restrictions***

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2. Applicant's election without traverse of Invention IV, claims 22-24, 26-39, 35-37, 43, 46 and 49-67 in the reply filed on February 11, 2009 is acknowledged.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 22, 23, 29, 35, 43, 54-56, and 63-67 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,684,879 to Coffee et al.

As per claim 22, Coffee et al discloses in Figure 2, means for supplying liquid (from (8)) to an outlet (at (11)), an electrical discharge means (12) including means (7a) for coupling the electrical discharge means to a first potential (from (7)) and for coupling the outlet (11) to a second, different, potential (from (5)) for causing an electric field to be generated at said outlet to produce a dispersion of aroma-providing droplets from liquid issuing from the outlet and for producing at the electrical discharge means ions to at least partially electrically discharge the dispersion, wherein said one of said outlet and said electrical discharge means is coupled to said first potential via a resistance (Col. 2, lines 55-Col. 3, line2).

As per claim 23, the coupling means, as cited, include a couple to earth.

As per claim 29, as shown in Figure 2, then electrical discharge means 911) surround the liquid outlet.

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As per claim 35, a resistance couples the outlet to a first potential (at 12), with the coating on the electrode 912) providing the resistance.

As per claim 43, a control is disclosed for enabling the device to be activated in a predetermined manner (SW1, SW2) which can be at a predetermined time via a delay (120).

As per claim 46, 54, and 55 the embodiment shown in Figure 11 discloses a plurality of liquids (8) and means for controlling the liquids at different times, as the delay (120) is schematically coupled to only one pump and reservoir

As per claim 56, a flexible reservoir is disclosed (Col. 5, line 6)

As per claim 63, the device of Coffee et al is shown being carried by a person (Figure 1).

As per claims 64-67, Coffee et al teaches its device being used with olfactory stimuli and suppressants (Col. 1, lines 5-9).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 26, 27, 37, 60 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,684,879 to Coffee et al.

The rejection of claim 22 serves as the basis for the following.

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As per claims 26, 27, 37, 49, Coffee et al is silent as to the resistance of a plausible component resistor but does teach a desired resistivity of a coating on an electrode to create the same result of 500 mega ohms with the coating being  $5 \times 10^{11}$  Ohms per centimeter of coating at 2mm thick. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted a component resistor of the desired resistivity range, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering a workable range involves only routine skill in the art. See in *re Aller*, 105 USPQ 233.

As per claim 60 and 62, there is no teaching of the device of Coffee et al being placed on a tabletop or in use with a motor vehicle, however, as the device is being shown being carried by a person in Figure 1, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have placed the device of Coffee et al on a surface after its use, on a table or in the interior of a known motor vehicle.

7. Claims 28, 36, 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,684,879 to Coffee et al in view of U.S. Patent 5,655,517 to Coffee.

The rejection of claim 22 serves as the basis for the following.

As per claims 28, 36 and 51-53 Coffee et al teaches all the limitations of the claims except for qualifying the resistance of the liquid in the use of an electrostatic sprayer, that resistance being variable. However, Coffee discloses (Col. 2, line 56-58) such a use, with the resistance being variable, by nature, bases on the amount of liquid

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available in a reservoir. Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Coffee et al with a resistance measurement as suggested by Coffee. Doing so would provide more precise spraying and because (a) the Coffee et al reference and the Coffee reference are *known work in one of field of endeavor*, (b) such modification is merely the use of known technique to improve a similar device by Applicant and (c) such modification, i.e. choosing from a finite number of predictable solutions, is not of innovation but of ordinary skill and common sense.

*KSR, International Co. v. Teleflex Inc., 550 U.S. (2007).*

8. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,684,879 to Coffee et al in view of U.S. Patent No. 4,095,596 to Grayson.

The rejection of claim 56 above serves as the basis for the following.

Coffee et al teaches all the limitations of the claims except for a frangible seal with a reservoir. However, Grayson discloses a frangible ampul or reservoir 9(See Abstract). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Coffee et al with a single use frangible reservoir as suggested by Grayson. Doing so would provide a disposable system and because (a) the Coffee et al reference and the Grayson reference are *known work in one of field of endeavor*, (b) such modification is merely the use of known technique to improve a similar device by Applicant and (c) such modification, i.e. choosing from a finite number of predictable solutions, is not of innovation but of ordinary skill and common sense.

*KSR, International Co. v. Teleflex Inc., 550 U.S. (2007).*

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9. Claim 58, 59 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,684,879 to Coffee et al in view of U.S. Patent No. 6,602,475 to Chiao

The rejection of claim 22 serves as the basis for the following.

As per claims 58, 59, and 61 there is no teaching by Coffee et al for the use of its device in combination with a various multimedia systems. Chiao teaches scent dispersion by electrostatic means in combination with a barcode reader (Col. 5, line 55-64) as well as with a home entertainment system by way of DVD's and personal computers (i.e. internet) (Col. 8, lines 50-61). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Coffee et al with various multimedia combinations as suggested by Chiao. Doing so would provide an improved multimedia experience and because (a) the Coffee et al reference and the Chiao reference are *known work in one of field of endeavor*, (b) such modification is merely the use of known technique to improve a similar device by Applicant and (c) such modification, i.e. choosing from a finite number of predictable solutions, is not of innovation but of ordinary skill and common sense. *KSR, International Co. v. Teleflex Inc.*, 550 U.S. (2007).

10. Claim 64 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,684,879 to Coffee et al in view of U.S. Patent No. 5,655,517 to Coffee

The rejection of claim 22 serves as the basis for the following.

As per claims 64 and 65, there is no teaching by Coffee et al for the use of its device with insecticides or insect repellant. However, Coffee discloses the use of an



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electrostatic sprayer to dispense aromas (qualifying as insect repellants) and insecticides (Co. 2, line 64-68). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Coffee et al with an additional dispensing uses as suggested by Coffee. Doing so would provide an improved form of insect control and because (a) the Coffee et al reference and the Coffee reference are *known work in one of field of endeavor*, (b) such modification is merely the use of known technique to improve a similar device by Applicant. and (c) such modification, i.e. choosing from a finite number of predictable solutions, is not of innovation but of ordinary skill and common sense. *KSR, International Co. v. Teleflex Inc., 550 U.S. (2007)*.

### **Conclusion**

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is as follows:

U.S. Patent No. 5,337,963 to Noakes

U.S. Patent No. 6,684,879 to Coffee et al

U.S. Patent No. 5,267,555 to Pajalich

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES S. HOGAN whose telephone number is (571)272-4902. The examiner can normally be reached on Mon-Fri, 6:00a-3:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. S. H./  
Examiner, Art Unit 3752

/Dinh Q Nguyen/  
Primary Examiner, Art Unit 3752